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7 BEFORE THE FOREST PRACTICES APPEALS BOARD
8 STATE OF WASHINGTON
9

10 STEPHEN C. JOHNSON,)
11)
12 Appellant,) NO. 94-6
13)
14 v.) DEPARTMENT OF NATURAL
15) RESOURCES' PROPOSED FINDINGS
16) OF FACT, CONCLUSIONS OF LAW,
17) AND ORDER
18)
19 STATE OF WASHINGTON,)
20)
21 DEPARTMENT OF NATURAL)
22) RESOURCES,)
23)
24 Respondent.)
25)
26)

17 THIS MATTER came on for hearing before the Forest Practices
18 Appeals Board ("FPAB"), the Honorable William A. Harrison,
19 Administrative Appeals Judge, presiding, and Board Members Robert
20 E. Quoidbach and Dr. Martin R. Kaatz.

21 The matter is an appeal from a stop work order issued by the
22 Department of Natural Resources (the "Department") to the
23 appellant.

24 Appearances were as follows:

25 1. Thomas A. Cena, attorney at law, for appellant Stephen
26 Johnson.

1 2. Cheryl Nielson, assistant attorney general, for
2 respondent Department of Natural Resources.

3 The hearing was held on Wednesday, February 23, 1994, in
4 Lacey, Washington. Court reporting services were provided by
5 Lenore Schatz of Gene Barker and Associates.

6 Witnesses were sworn and testified. Exhibits were examined.
7 From testimony heard and exhibits examined, the Forest Practices
8 Appeals Board makes these

9 FINDINGS OF FACT

10 I.

11 On December 20, 1993, the Department of Natural Resources
12 approved forest practices application FP 04-31136, which listed
13 Stephen Johnson as landowner, timberowner and operator, as a Class
14 III forest practices permit.

15 II.

16 Forest Practices application FP-04-31136 permitted an even-
17 aged harvest of approximately 50 acres in east Lewis County,
18 Washington.

19 III.

20 The harvest site is situated within the Kosmos watershed,
21 which has not undergone watershed analysis.

22 IV.

23 The harvest site contains Stiltner Creek, a type 3, fish-
24 bearing water, as well as type four and five waters tributary to
25 Stiltner Creek.

26 ///

1 V.

2 The harvest site contains two slide-prone areas, designated
3 as Leave Areas 1 and 2 in the Revised Logging Plan attached as
4 part of FP-04-31136, in which some of the slopes exceed 60
5 percent.

6 VI.

7 Leaves Areas 1 and 2 are located on slopes above the typed
8 waters on the harvest site.

9 VII.

10 Within Leave Area 2 as designated by the Department there are
11 soils exposed by previous sliding, and other characteristics
12 suggesting slope instability including steep slopes, presence of
13 water at and near the surface of the ground, and soils and debris
14 at the bottom of the ravine deposited by past slides.

15 VIII.

16 Within Leave Area 1 as designated by the Department there are
17 soils exposed by previous sliding, and steep slopes, a cause and
18 predictor of slope stability.

19 IX.

20 On areas adjacent to the Johnson harvest site there are
21 slopes that have experienced recent landsliding. Some of the
22 landslides in these areas occurred after harvest on those sites.

23 X.

24 Canopy removal within Leave Areas 1 and 2 will kill tree
25 roots and thus destroy a large proportion of root strength in the
26 soil, decreasing slope stability.

1 XI.

2 Forest Practices permit FP-04-31136, as approved by the
3 Department, excluded any operation in Leave Areas 1 and 2, and
4 in the riparian management zone along the typed waters.

5 XII.

6 Forest Practices permit FP-04-31136 required that appellant
7 obtain a Hydraulics Project Approval from the Washington
8 Department of Wildlife and required that harvest occur according
9 to the Revised Logging Plan attached as part of the permit.

10 XIII.

11 The Department conducted field review, considering geologic,
12 geomorphic and hydrologic conditions at the site and in the
13 immediate vicinity, soils maps and descriptions, and information
14 contained in the geologic report by Marshall T. Huntting submitted
15 by Stephen Johnson in processing FP-04-31136.

16 XIV.

17 Leave Areas 1 and 2 were drawn on the Revised Logging Plan
18 which was part of forest practices permit FP-04-31136.

19 XV.

20 The drawings of Leave Areas 1 and 2 were not to scale.

21 XVI.

22 Department forester Richard Peake and the appellant met on
23 the harvest site before forest practices permit FP-04-31136 was
24 approved and discussed boundaries of Leave Areas 1 and 2 and the
25 riparian management zone.

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XVII.

Department forester Richard Peake indicated to the appellant the boundaries as approved on forest practices permit FP-04-31136.

XVIII.

There was a misunderstanding between the appellant and Department forester Richard Peake as to the location of the boundaries of Leave Areas 1 and 2.

XIX.

The appellant felled trees within Leave Areas 1 and 2 and also felled about 50% of the trees on the harvest site located outside Leave Areas 1 and 2.

XX.

DNR issued a stop work order on February 7, 1994, to appellant for deviation from FP-04-31136 by operating within Leave Areas 1 and 2. The February 7, 1994 stop work order required that the appellant stop all work pending submission and approval of a Class IV-Special forest practices permit for the operations being conducted on the harvest site.

XXI.

Any Conclusion of Law deemed to be a Finding of Face is hereby adopted as such.

From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

XXII.

The governing provisions of the Forest Practices Act are RCW 76.09.080(1) and RCW 76.09.050(1) which provide, in pertinent

1 part:

2
3 *The department shall have the authority to serve upon an*
4 *operator a stop work order which shall be a final order*
5 *of the department if: (a) There is any violation of the*
6 *provisions of this chapter or the forest practices; or*
7 *(b) There is a deviation from the approved application;*
8 *or (c) Immediate action is necessary to prevent*
9 *continuation of or to avoid material damage to a public*
10 *resource.*

11 RCW 76.09.080(1) (emphasis supplied).

12
13 **The board shall establish by rule which forest practices**
14 **shall be included within each of the following classes:**

15

16 **Class IV:** Forest practices other than those contained
17 in Class I or II:

18

19 (d) which have a potential for a substantial impact on
20 the environment and therefore require an evaluation by
21 the department as to whether or not a detailed statement
22 must be prepared pursuant to the state environmental
23 policy act, chapter 43.21C RCW.

24 RCW 76.09.050(1) (emphasis supplied).

25 XXIII.

26 Regulations implementing the Forest Practices Act provide in
pertinent part:

"Class IV-special." Application to conduct forest
practices involving the following circumstances requires
an environmental checklist in compliance with the State
Environmental Policy Act (SEPA), and SEPA guidelines, as
they have been determined to have potential for a
substantial impact on the environment. It may be
determined that additional information or a detailed
environmental statement is required before these forest
practices may be conducted.

.

1 (e) Timber harvest in a watershed administrative unit
2 that has not undergone a watershed analysis under
3 chapter 222-22 WAC, on slide prone areas, field verified
4 by the department, where soils, geologic structure, and
5 local hydrology indicate that canopy removal has the
6 potential for increasing slope instability, when such
7 areas occur on an uninterrupted slope above any water
typed pursuant to WAC 222-16-030, Type A or Type B
Wetland, or a capital improvement of the state or its
political subdivisions where there is a potential for a
substantial debris flow or mass failure to cause
significant impact to public resources.

8 WAC 222-16-050(1)(e) (emphasis supplied).

9
10 **Deviation from prior application or notification.**
11 Substantial deviation from a notification or an approved
12 application requires a revised notification or
application. Other deviations may be authorized by a
supplemental directive, notice to comply or stop work
order.

13 WAC 222-20-060.

14 XXIV.

15 The underlying purpose of WAC 222-16-050(1)(e) is to require
16 a more detailed review of forest practices on steep, unstable
17 slopes.

18 XXV.

19 Leave Areas 1 and 2, as designated by the Department, are
20 slide prone areas requiring SEPA review and protection within the
21 meaning of RCW 76.09.050(1) and WAC 222-16-050(1)(e).

22 XXVI.

23 The appellant's forest practices application was classified
24 as Class III because the slide prone areas were excluded from the
25 harvest area. Inclusion of Leave Areas 1 and 2 in appellant's
26 forest practices application would have resulted in the

1 classification of FP-04-31136 as a Class IV-Special forest
2 practice subject to review under SEPA.

3 XXVII.

4 Appellant's operations preceding the issuance of the Stop
5 Work Order were inconsistent with RCW 76.09.050(1) and WAC 222-16-
6 050(1)(e) and the terms of the forest practices permit FP 04-
7 31136, and caused a potential for material damage to public
8 resources. The issuance of the February 7, 1994 Stop Work Order
9 was consistent with RCW 76.09.080(1).

10 XXVIII.

11 Appellant's operation within Leave Areas One and Two
12 constituted the conducting of a Class IV-Special forest practice
13 without the environmental review required by the Forest Practices
14 Act and the State Environmental Policy Act.

15 XXIX.

16 Any Finding of Fact deemed to be a Conclusion of Law is
17 hereby adopted as such.

18 From the foregoing, the Board issues this:

19 ORDER

20 (1) The Stop Work Order issued by the Department on February
21 7, 1994, to appellant is sustained with the following exception:

22 Appellant may remove timber already felled as of February 7,
23 1994, pursuant to conditions specified on FP-04-31136, PROVIDED
24 THAT appellant may not remove downed timber felled within the
25 boundaries of Leave Areas One and Two unless and until appellant
26 obtains a Class IV-Special forest practices permit authorizing

1 operation within these Leave Areas.

2 (2) Leave Areas 1 and 2 are to be marked on the ground as
3 approved by the Department. The boundary of Leave Area 2 is as
4 shown in respondent's exhibit R-2, marked by Department geologist
5 Matt Brunengo.

6 (3) Appellant must submit an environmental checklist to the
7 Department so that FP 04-31136 may undergo environmental review as
8 required by the Forest Practices Act and SEPA.

9 (4) Appellant may not conduct further harvesting of standing
10 timber until such time as a Class IV-Special forest practices
11 permit is approved by the Department for the harvest site.


12 DONE at Lacey, Washington, this 29th day of July,
13 1994.

14 William A. Harrison
15 THE HONORABLE WILLIAM A. HARRISON
16 Administrative Appeals Judge

17
18 FOREST PRACTICES APPEALS BOARD

19 Martin R. Kaatz
20 DR. MARTIN R. KAATZ

21 Robert E. Quoidbach
22 ROBERT E. QUOIDBACH
23
24
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1 Presented By:
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3 Attorney General
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5 CHERYL A. NIELSON
6 Assistant Attorney General
7 WSBA No. 20163
8 Attorneys for Respondent
9 State of Washington,
10 Department of Natural Resources
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